IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 582 of 1988
with
SPECIAL CIVIL APPLICATION No 2334 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

KANTILAL K SHETH

Versus

V B MEHTA

Appearance:
MR KC PATEL for Petitioner
..... for Petitioners No. 2-6
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/12/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

#. Petitioner, namely Arunoday Mills Ltd. Employees' Welfare Fund, Morbi has challenged the notice issued under Section 148 of the Income-tax Act, 1961 (hereinafter to be referred to as "the Act"), issued by the respondent for Assessment Year 1976-77 in Special Civil Application No. 582 of 1988 through its trustees. Similarly, similar notices issued under Section 148 of the Act pertaining to Assessment Years 1977-78 to 1982-83 have been challenged in Special Civil Application No. 2334 of 1986.

#. At the time of hearing, our attention was invited on behalf of the petitioner that the respondent on 20th September, 1985 passed an order for Assessment Year 1983-84 holding that as the petitioner was not registered under any Act, the status of the Fund would be an Association of persons. It was further held that taking in to consideration the terms of the deed of the Trust, contributions received by the petitioner-Trust from the Limited Company were the main source of income of the petitioner-Fund and as the contributions came from a regular source and the Fund had right to receive the same, the same constituted the income in hands of the petitioner-Trust. This order was carried in appeal by the petitioner and thereafter, by way of Second Appeal to the Income-tax Appellate Tribunal. During the pendency of the appeal before the Tribunal, the impugned notices under Section 148 of the Act have been issued by the respondent.

#. Our attention is invited to the two decisions of this Court for Assessment Year 1983-84 in the case of this very assessee being ITR 169/83 rendered on 30th August, 1996 and for Assessment Year 1984-85 in ITR 92/95 rendered on 7th November, 2001. It appears that during the pendency of these petitions, the Tribunal decided the appeals for the aforesaid two assessment years and the Revenue came up in Reference on merits of the issue for the two assessment years namely 1983-84 and 1984-85. It has been held by this Court that the voluntary contribution received by the assessee is not to be treated as income in the hands of the assessee. In view of these facts, it was submitted that both the petitions are required to be allowed, firstly because on merits, there was no escapement of income and secondly because in light of decision on merits, it could not be stated that there was any failure or omission on the part of the assessee as required under Section 147(a) of the Act so as to enable the respondent to assume jurisdiction. On

behalf of the respondent, Mr. Qureshi very fairly submitted that the controversy stands concluded in favour of the assessee by the aforesaid decisions of this Court in the assessee's own case.

#. In light of the facts as stated hereinbefore, it is not necessary to deal with any other aspect of the controversy. The petitions are allowed accordingly in the aforesaid terms. The impugned notices issued under Section 148 of the Act are quashed and set aside. Rule issued on 28.7.88 in Special Civil Application No. 582/88 and Rule issued on 22nd June, 1987 in Special Civil Application 2334/86 is made absolute in the aforesaid terms with no order as to costs.

[B.C. PATEL, J.] [D. A. MEHTA, J.]

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